No. 08-19-00002-CV

IN THE COURT OF APPEALS
FOR THE EIGHTH DISTRICT OF TEXAS
AT EL PASO

WILLIAM EGGEMEYER, DIANE EGGEMEYER, BO EGGEMEYER, AND SHARYLAND DISTRIBUTION AND TRANSMISSION SERVICES, LLC,

Appellants,

v.

CHARLES JACKSON HUGHES,

Appellee.

On Appeal from the 112th District Court
of Reagan County, Texas

BRIEF OF APPELLEE CHARLES JACKSON HUGHES

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TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

CASES

STATUTES AND RULES

OTHER AUTHORITIES

STATEMENT OF THE CASE

Nature of the Case:	In this boundary-line dispute, the Eggemeyers contest the factual sufficiency of the evidence supporting the trial court's boundary-line determination between the Hughes Family Ranch and the Eggemeyers' adjacent properties.
Trial Court:	The Honorable Pete Gomez, 112th Judicial Court of Reagan County, Texas
Trial Court Disposition:	After a multi-day bench trial, the trial court determined that the boundary line between the parties' adjacent properties is the established governmental section line marked on the ground by stone mounds. CR.1155-57 (Final Judgment) (App. A); CR.1165-71 (Findings of Fact and Conclusions of Law) (App. B).

STATEMENT REGARDING ORAL ARGUMENT

Because the evidence presented to the trial court is far more than sufficient to sustain the trial court's judgment, there is no need to hear oral argument in this matter. Nonetheless, should the Court consider oral argument beneficial, Appellee Charles J. Hughes would respectfully request the opportunity to participate.

ISSUES PRESENTED

1. Is the trial court's boundary-line determination—that the boundary between the Hughes Family Ranch and the Eggemeyers' properties is the established governmental section line marked on the ground by stone mounds (as indicated by the plain terms of the title instruments)—so "manifestly unjust" that it "shocks the conscience" and "clearly demonstrates" the trial court's bias?

2. Did the trial court abuse its discretion by awarding segregated attorneys' fees?

STATEMENT OF FACTS

This is a dispute over the boundary line of a small portion of the Hughes Family Ranch, which has undisputedly been in Plaintiff Charles "Char" Hughes's family for several generations. Giving effect to the plain terms of the applicable instruments of title—including those of a 1914 boundary-line agreement central to the resolution of this case—the trial court determined that the boundary line between the Hughes Ranch and the Eggemeyers' properties is the established governmental section line evidenced on the ground by stone mounds. CR.1155-57; CR.1165-71.

The Hughes Ranch has been in Mr. Hughes's family for generations.

It is undisputed that Mr. Hughes is the current owner of the Hughes Family Ranch in Reagan County, as was demonstrated by an unbroken chain of title—entered into evidence without objection—from the sovereign all the way to Mr. Hughes. CR.29-49; 5.RR.Exs.1.1-1.109. Now in his 60's, some of Mr. Hughes's earliest memories were of time spent on the ranch. 2.RR.46-47, 49-50. Initially, his grandmother Fay Cook took him to the ranch; later, his father Studley Emery Hughes did. 2.RR.49-50.

As a young man, Mr. Hughes lived on the ranch for a period—tasked with painting a barn and repairing fences. 2.RR.52. At the time, he was also tasked with keeping an eye on the ranch as a whole, including the exterior boundary areas at issue in this case—*i.e.*, the boundary between the Hughes Ranch in Sections 7 (G.C. & S.F.

RR. Co. survey) and 8 (E.W. Walker survey) and the adjacent Eggemeyer properties in Sections 4 (W.G. Bartlett survey) and 3 (G.C. & S.F. RR. Co. survey). *See* CR.22. According to Mr. Hughes's uncontroverted testimony, he and his family long understood that the boundary between the Hughes Ranch and those adjacent properties is the established governmental section line—not (as the Eggemeyers contend) an old fence line within the Hughes Ranch on Sections 7 and 8. 2.RR.58, 65-66, 77, 81-83, 86, 89.

The Hughes family wasn't bothered by the existence of the interior fence because—as both sides acknowledged at trial—it isn't unusual for fences on West Texas ranches to be built off of property lines. 2.RR.108-09; 3.RR.164. One reason is that West Texas counties are "fence out" counties—meaning that cattle are allowed to graze anywhere unless "fenced out"; no one has a duty to fence the perimeter of their land. *See* 2.RR.106-07. A second reason is that the terrain along a particular property boundary may be unsuitable for fence-building. 2.RR.58-62. For example, some property owners will avoid locating a fence across a creek or draw, which may wash out a fence during heavy rains. 2.RR.60-61.

According to Mr. Hughes, that was the case along this particular property line: the fence was built off of the boundary line because the terrain along the line made fence-building there particularly difficult. 2.RR.58-62. In fact, according to Mr. Hughes's testimony, there had been an oral agreement between neighbors many years

ago recognizing that the interior fence within Sections 7 and 8 was not the boundary line; rather, the governmental section line between Sections 7 and 8 (to the north) and Sections 3 and 4 (to the south) is the proper boundary line (as marked on the ground by stone mounds). 2.RR.58; 3.RR.242, 250. No neighbor had ever claimed otherwise to the Hughes family; that is, until the Eggemeyers. 2.RR.65-66, 77, 80-83, 85-86.

The Eggemeyers purchase property adjacent to the Hughes Ranch and claim that the interior fence—not the established governmental section line—is the boundary line between the properties.

In 2012, members of the Eggemeyer family purchased property to the south of the Hughes Ranch. 3.RR.96-98. The Eggemeyers initially contacted Mr. Hughes through Russ Eggemeyer—Bo Eggemeyer's brother and William Eggemeyer's son. 2.RR.100. Russ indicated that he and his brother had purchased the ranch south of the Hughes Ranch for farming, and asked Mr. Hughes for a waiver of the local conservation district's setback requirement in order to locate a water well closer to the property line. 2.RR.101. Russ told Mr. Hughes that he and his brother had each received a "young farmers" loan from the Department of Agriculture for the project. 2.RR.107-08.

In that first conversation, Mr. Hughes explained that the existing dilapidated fence was not on the property line, and he offered to pay to build a new fence on the line—which would ultimately benefit the young farmers by helping protect their crop once they installed an irrigated field. 2.RR.106. Mr. Hughes said he would pay for

the surveyor too, and Russ stated that he and Bo had no objection to a new fence being built on the real property line—*i.e.*, the established governmental section line. 2.RR.110. In turn, Russ agreed to use the Eggemeyers' excavators to clear the section line for the new fence. 2.RR.113. Soon after, Mr. Hughes and his wife Julie met with the Eggemeyers and confirmed their agreement that Mr. Hughes would pay for a new fence on the governmental section line. 2.RR.130-32.

That agreement fell apart. The "deal" was "off," in the words of Bo Eggemeyer, when the brothers learned that the governmental section line and the interior fence line were farther apart than they had realized. 3.RR.117. Mr. Hughes's fence crew was escorted off the property by the Eggemeyers. 2.RR.147. At that point, the parties were at a standstill—necessitating this lawsuit to determine the boundary line between the parties' adjacent properties.

Mr. Hughes sues to keep his family ranch together.

In all of his years, no family member or ranch neighbor had ever suggested the boundary between the Hughes Ranch and the adjacent properties to the south was anything other than the governmental section line—which is marked on the ground by stone mounds. 2.RR.65-66, 77, 80-83, 85-86, 88-89. But, as it turned out, the Eggemeyers believed that they had purchased the properties south of the Hughes Ranch all the way up to the interior fence line within Sections 7 and 8—north of the

governmental section lines. 3.RR.106. The only way forward was a judicial resolution.

So on March 12, 2015, Mr. Hughes filed suit for a determination of the boundary line between the Hughes Ranch (to the north) and the Eggemeyers' properties (to the south). CR.7-21. If—as Mr. Hughes contends—the boundary line between the Hughes Ranch and the Eggemeyers' properties is the established governmental section line, then the sliver of land between the governmental section line and the present-in-2019 fence within Sections 7 and 8 remains part of the Hughes Ranch. CR.8-9. But if—as the Eggemeyers contend—the boundary line between the Hughes Ranch and the Eggemeyers' properties is the dilapidated fence within Sections 7 and 8, then the sliver of land between the governmental section line and the fence was somehow transferred from the Hughes Family to the Eggemeyers. CR.8-9.

The Eggemeyers answered the suit, alleging that they own the disputed land due to either adverse possession or record title. CR.538-47.

After a three-day bench trial, the court found that the boundary line between the properties is the governmental section line marked on the ground by stone mounds and that the Eggemeyers did not demonstrate adverse possession.

At trial, Mr. Hughes's record title to the Hughes Ranch remained essentially undisputed, although the Eggemeyers did argue that a 1914 boundary-line agreement set part of the boundary line as the present-in-2019 interior fence within Sections 7

and 8 (rather than the governmental section line), and that the presence of a quitclaim deed in Mr. Hughes's chain of title demonstrated a "gap" in Mr. Hughes's chain of title to the sliver of land between the present-in-2019 fence and the governmental section line. 3.RR.239-41, 244-46; 4.RR.30. The majority of the Eggemeyers' trial testimony and arguments, however, related to the Eggemeyers' adverse-possession claim. *E.g.*, 3.RR.120-21, 130-31, 133, 197, 199, 201.

The trial court entered final judgment for Mr. Hughes, holding that the governmental "section lines ... establish the boundary lines between Plaintiffs' and Defendants' respective tracts." CR.1156. The court also issued findings of fact and conclusions of law, CR.1165-69, finding or holding that:

- Mr. Hughes demonstrated his title to the Hughes Ranch through a regular and superior chain of title from the sovereign, CR.1166;
- the boundary line between the parties' adjacent properties is the governmental section line, which is marked in the deed records and on the ground today by a series of stone mounds, CR.1166-67;
- the interior fence north of the governmental section line is not the boundary line between the parties' adjacent properties, and there is no evidence that the interior fence present today is the same as a fence referenced in the 1914 boundary agreement, CR.1167; and
- the Eggemeyers did not demonstrate adverse possession of the sliver of land on Mr. Hughes's property between the governmental section line and the interior fence, CR.1167.

Because this dispute is a suit over the location of the boundary line between the parties' properties, the trial court also awarded Mr. Hughes segregated attorneys' fees. CR.1168-69.

The Eggemeyers now appeal, arguing that the "totality of the evidence" requires the case to be retried. *E.g.*, Egg.Br. at 22-23.

SUMMARY OF THE ARGUMENT

This is not a complicated case. The ultimate issue is—and has always been—the location of the property-boundary line between the Hughes Ranch and the Eggemeyers' adjacent properties. If the boundary line is the governmental section line marked on the ground by stone mounds, Mr. Hughes prevails. If the boundary line is the present-in-2019 fence line, then the Eggemeyers prevail.

After a three-day bench trial, the trial court determined that the boundary line between the Hughes Ranch and the Eggemeyers' properties is the established governmental section line marked on the ground by stone mounds. That determination is supported by overwhelming and conclusive evidence in the deed instruments. It is also supported by a 1914 boundary-line agreement— executed by the parties' predecessors-in-interest—which expressly identifies the property-boundary line as the governmental section line marked on the ground by stone mounds. The trial court's judgment is correct and should be affirmed.

ARGUMENT

I. THE TRIAL COURT'S BOUNDARY-LINE DETERMINATION SHOULD BE AFFIRMED.

The Eggemeyers' primary argument on appeal is a challenge to the factual sufficiency of the evidence supporting the trial court's determination that the boundary line between the Hughes Ranch (to the north) and the Eggemeyers' properties (to the south) is the governmental section line marked on the ground by stone mounds. *See* Egg.Br. at 14-23 (arguing that "totality of the evidence" requires "remand for a new trial"). In reality, the evidence presented at trial is far more than factually sufficient to support the trial court's property-boundary determination.

A. The Trial Court's Determination of the Boundary Line Between the Hughes Ranch and the Eggemeyers' Properties Is Supported by Far More Than Factually Sufficient Evidence.

Challenges to the factual sufficiency of evidence supporting a trier-of-fact's findings face a burden so high that they are almost always unsuccessful. To set aside a judgment for factual insufficiency, the appellant must convince the court of appeals that a finding was so "manifestly unjust" that it "shocks the conscience" or "clearly demonstrates bias." *Pool v. Ford Motor Co.*, 715 S.W.2d 629, 635 (Tex. 1986) (op. on reh'g); *see also Windrum v. Kareh*, 581 S.W.3d 761, 781-82 (Tex. 2019); *In re King's Estate*, 150 Tex. 662, 244 S.W.2d 660, 661 (1951). "If a party is attacking the factual sufficiency of an adverse finding on an issue to which the other party had the

burden of proof, the attacking party must demonstrate that there is insufficient evidence to support the adverse finding." *Kendall Builders, Inc. v. Chesson*, 149 S.W.3d 796, 803 (Tex. App.—Austin 2004, pet. denied) (citing *Westech Eng'g, Inc. v. Clearwater Constructors, Inc.*, 835 S.W.2d 190, 196 (Tex. App.—Austin 1992, no writ)). An appellate court reviewing such a challenge may "set aside the verdict only if the evidence that supports the ... finding is so weak as to be clearly wrong and manifestly unjust." *Kendall Builders*, 149 S.W.3d at 803 (citing *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986)). The court "may not reverse merely because [it] conclude[s] that the evidence preponderates toward a different answer." *Kendall Builders*, 149 S.W.3d at 803 (citing *Herbert v. Herbert*, 754 S.W.2d 141, 144 (Tex. 1988)). In evaluating the evidence, the appellate court reviewing a factual-sufficiency challenge may "not substitute its judgment for that of the fact finder." *Windrum*, 581 S.W.3d at 770; *see also Onkst v. Morgan*, No. 03-18-00367-CV, 2019 WL 4281913, *1 (Tex. App.—Austin Sept. 11, 2019, pet. denied) (mem. op.). To the contrary, the fact finder "is the sole judge of the credibility of witnesses and the weight to be given their testimony." *Onkst*, 2019 WL 4281913, at *1; *see also Austin Tapas, LP v. Performance Food Group*, No. 03-18-00680-CV, 2019 WL 3486574, *2 (Tex. App.—Austin Aug. 1, 2019, no pet.) (mem. op.). Here, the evidence supporting the trial court's determination—that the boundary line between the

Hughes Ranch (to the north) and Eggemeyers' properties (to the south) is the governmental section line—is not just sufficient, it is overwhelming.[1]

Although the evidence required to prevail in a title dispute resolved by a boundary-line determination is "relaxed" as a matter of law, *Heredia v. Zimprich*, 559 S.W.3d 223, 231 (Tex. App.—El Paso 2018, no pet.), Mr. Hughes nonetheless placed into evidence the complete chain of title to the Hughes Ranch—from the original grant in 1882 all the way to the date of trial. 5.RR. Ex. 1.1-1.109; *see also* CR.29-49. The entirety of the chain of instruments of title was admitted at trial without objection. *Id.* So was the 1914 boundary-line agreement between the parties' predecessors-in-interest, which—as the trial court found—expressly identified the boundary line between the parties' adjacent properties as the established governmental section line marked by stone mounds. 5.RR.Ex.1.16 (identifying property line as the line between the stone mounds on the southernmost corners of established governmental section). Those instruments, in and of themselves, are far more than factually sufficient to support the trial court's boundary-line determination. *See* 5.RR.1.1-1.109; CR.29-49. So too was the testimony of Mr. Hughes, who

1. The boundary line between the Hughes Ranch (to the north) and the Eggemeyers' properties (to the south) was the primary boundary dispute between the parties at trial. As the Eggemeyers note on appeal, there was also a much smaller dispute involving the boundary line between the Hughes Ranch (to the east) and the Eggemeyers' properties (to the west). However, the Eggemeyers presented no argument related to the trial court's judgment regarding that secondary dispute, so any such argument is waived. *See* TEX. R. APP. P. 38.1(i). Regardless, the deed instruments support all of the trial court's findings related to the property boundaries.

testified at length to the presence of stone mounds along the section line referenced as the property line in the 1914 boundary-line agreement. *E.g.*, 2.RR.89-90; 3.RR.246-27; 3.RR.249-50. In fact, the Eggemeyers' counsel conceded that the stone mounds exist "on the section line, which is where they should be," 3.RR.253, and the Eggemeyers' "expert" witness conceded that the stone mounds are found today "all along the section line"—as referenced in the boundary agreement—and *not* "along the existing fence line." 4.RR.133.

To put this case as simply as possible:

- the 1914 boundary-line agreement between the parties' predecessors-in-interest identified the boundary between the parties' adjacent properties as the line between the corners of the established governmental section marked by stone mounds—*i.e.*, the governmental section line, 5.RR.Ex.1.16;

- the established governmental section line is still present and marked by stone mounds today, 2.RR.89-90, 145; 3.RR.239-40, 246-47, 249-50, 253; 4.RR.133;

- the Eggemeyers presented no controverting evidence regarding the location of the corners of the established governmental section line or the existence of stone mounds along that line;

- there is, therefore, far more than sufficient evidence to support the trial court's determination that the established governmental section line is the property-boundary line.

B. The Eggemeyers' "Sufficiency" Arguments Are Without Merit.

The Eggemeyers' various attempts to "nit-pick" Mr. Hughes's superior title from the sovereign are demonstrably incorrect—and fall far short of showing that the

trial court's findings "shock the conscience," are "manifestly unjust," or "clearly demonstrate" the trial court's "bias." *See Pool*, 715 S.W.2d at 635.

1. The boundary agreement.

The Eggemeyers' first argument, for example, is that the 1914 boundary-line agreement between the property owners' predecessors-in-interest conclusively set the boundary between the properties at the present-in-2019 fence line within Sections 7 and 8—rather than the established governmental section line. *See* Egg.Br. at 15. But that just isn't true. By expressly describing the boundary line between the parties' properties as the line between the southwest corner of Section 7 and the southeast corner of Section 7, the plain language of the 1914 boundary-line agreement identified the boundary line between the adjacent properties as the governmental section line:

> [T]he following describe[d] line is, and shall constitute the true, correct and agreed boundary line between said respective lands: ... Commencing at a stake and a stone [mound] ... for the S.W. corner of said survey No. 7 ... East to a stone [mound] set ... for ... the S.E. corner of said Sur[vey] No. 7.

5.RR.Ex.1.16. (emphasis added). It is axiomatic that a line between the two southernmost corners of a rectangular section is the southern boundary of that section—meaning that the parties to the boundary-line agreement unequivocally identified the boundary between the parties' adjacent properties as the boundary between the governmentally recognized sections, *not* a different line within the

sections. *Id.* That undeniable fact alone defeats the Eggemeyers' challenge to the factual sufficiency of evidence supporting the trial court's boundary-line determination.

Moreover, the fact that the 1914 boundary-line agreement identified the property-boundary line between the parties' predecessors-in-interest as the established governmental section line is confirmed by the instrument's explicit reference to the presence of stone mounds marking the property line; those stone mounds are in the governmental section line—not the present-in-2019 fence line. 4.RR.133. Again, in the agreement, the parties identified the boundary between the adjacent properties as the line between the southwest corner of Section 7 and the southeast corner of Section 7. 5.RR.Ex.1.16. In so setting the boundary, the parties expressly marked the line as running between stone mounds at the section corners. *Id.* Marking boundary or section lines with stone mounds was a common practice around the turn of the century—when the agreement was executed. *See* David B. Brooks, 36A Tex. Prac., County and Special District Law Appendix B (2d ed.) (2019) (noting 1879 Texas statute requiring surveyors to set "mounds or stone monuments" to mark boundaries); *New York & T. Land Co., Ltd. v. Votaw*, 42 S.W. 138, 139-40 (Tex. Civ. App. 1897, writ dism'd) (noting presence of stone mounds along property line); *Shelton v. Bone*, 26 S.W. 224, 225 (Tex. Civ. App. 1894, no writ) (same). Those stone mounds referenced as being present along the established governmental

section line in 1914 remain present today *on the established governmental section line*—not beneath the now-present fence line within Sections 7 and 8. 4.RR.133. The testimony of the Eggemeyers' "expert" witness on this is abundantly clear:

> Q. [You] found stone mounds all along the section line and none along the existing fence line, correct?
>
> A. That's correct.

4.RR.133.

Despite that concession from their "expert" witness, the Eggemeyers insist that the present-in-2019 fence within the interior of Sections 7 and 8 is the real boundary line between the parties' property because the 1914 boundary-line agreement referenced a then-present fence that spanned the distance between the stone mounds at the southernmost corners of Section 7. *E.g.*, Egg.Br. at 15. But that argument just doesn't make sense. First, there is no evidence that the present-in-2019 fence, although admittedly old, is the fence mentioned in the 1914 boundary-line agreement. CR.1166. Just because a fence was present along the identified boundary line in 1914 doesn't mean that a fence present today is the same fence. Indeed, no evidence at all indicated when the present-in-2019 fence was built or by whom. *Id.* Second, the present-in-2019 fence does *not* run between the southernmost corners of the established governmental section lines as explicitly described as the location of the boundary line (and the fence spanning that line) in the 1914 boundary-line agreement.

4.RR.48; 3.RR.239. The Eggemeyers' theory would require a fact-finder to conclude—based not upon evidence but rather pure speculation—that when the parties to the boundary agreement established the boundary line as the line between the corners of the established governmental section lines, they did not mean it. And third, the 1914 boundary-line agreement expressly placed the boundary between the properties along a line marked by stone mounds on the ground, but there are no stone mounds along the present-in-2019 fence line; rather, the stone mounds are located exactly where the boundary-line agreement places them—on the established governmental section line (which undisputedly hasn't moved). 4.RR.48-49, 124-25, 129-30, 133; 3.RR.253.

Next, the Eggemeyers rhetorically ask why adjacent property owners would have agreed to set a boundary line along a line that was spanned by a then-present fence in 1914. *See* Egg.Br. at 16. It isn't entirely clear what point the Eggemeyers are making by posing the question (especially given that *their* argument is that the boundary-line agreement set the boundary along a fence within Sections 7 and 8 that shows up years later on land surveys). In any event, their question was answered at trial: according to uncontroverted testimony, the purpose of the boundary-line agreement was that the Hughes Family planned to replace a present-in-1914 section-line fence with an off-section-line interior fence within Sections 7 and 8, and they didn't want anyone later arguing (as the Eggemeyers do now) that the interior fence

created a new property line. 3.RR.249-51. So they placed in the deed records a boundary-line agreement that identified the boundary line as the line between the southernmost corners of Section 7 marked on the ground by stone mounds. *Id.*; 5.RR.Ex.1.16. That made sense because the terrain along the property line was ill-suited for building a long-term fence. 3.RR.250. As a result, the plain terms of the 1914 boundary-line agreement didn't change the property boundary line between the parties; rather, they confirmed that by moving the fence, the parties weren't moving the property line. 3.RR.249-51. Far from demonstrating that the trial court's boundary-line conclusion was "manifestly unjust," "shocks the conscience," or "clearly demonstrates bias," the 1914 boundary-line agreement confirms the correctness of the trial court's findings. *See Pool*, 715 S.W.2d at 635.[2]

2. The quitclaim deed.

The Eggemeyers next argue that there is a "gap" in Mr. Hughes's chain of title between Mr. Hughes's cousin Carol Crews Carter and his mother Wanda Hughes Doss. *See* Egg.Br. at 16-19. That too is incorrect. By an April 12, 1989 quitclaim deed, Carol Crews Carter granted to Wanda Hughes Doss "*[a]ll* of [her] right, title, and interest in and to" the surface of Sections 7 and 8. 5.RR.Ex.1.107 (emphasis

2. Likewise, the fact that an interior fence within Sections 7 and 8 shows up on surveys of the properties fourteen years after the boundary-line agreement, *see* Egg.Br. at 16, supports rather than undermines the trial court's findings. Evidently planning to build that fence, the parties to the 1914 boundary-line agreement were wise to record a deed expressly recognizing that the property line would remain the governmental section line dividing Section 7 (to the north) from Section 4 (to the south).

added). It has been long settled—as the Texas Supreme Court held as early as 1933—that "[a] quitclaim deed conveys the present title of the grantor as effectually as would a warranty deed." *Harrison Oil Co. v. Sherman*, 66 S.W.2d 701, 705 (Tex. Civ. App.—Beaumont 1933, writ ref'd); *see also Leatherman v. Holt*, 212 S.W.2d 1004, 1005 (Tex. Civ. App.—Eastland 1948, no writ) ("a quit claim conveys the title to the land itself, if possessed by the grantor at the time of execution and delivery of the deed, as fully and effectually as a deed purporting to convey the fee."); *Fidelity Lumber Co. v. Bendy*, 245 S.W. 981, 984 (Tex. Civ. App.—Beaumont 1922, writ dism'd w.o.j.) ("his quitclaim deed... was as potent to convey the title as would have been a general warranty deed"). The difference—as far as title goes—between quitclaim deeds and warranty deeds is simply that "for the quitclaim to be a conveyance, title in the grantor must be shown." *Adamson v. Doornbos*, 587 S.W.2d 445, 448 (Tex. Civ. App.—Beaumont 1979, no writ); *see also Abraham v. Crow*, 382 S.W.2d 756, 758 (Tex. Civ. App.—Amarillo 1964, no writ) (although a "quitclaim deed does not *of itself* establish any title," the "quitclaim passes the interest of the grantor in the property, and for the quitclaim to be a conveyance, title in the grantor must be shown"). The uncontroverted evidence presented at trial demonstrated that Carol Crews Carter received title to the entirety of Section 8 and all of Section 7 lying east of State Highway 33 through a prior agreed judgment. CR.48-49; 8.RR.DE29-072 (conveying all of Section 7 east of Highway 33 to Carol Crews Carter), DE29-

076 (conveying all of Section 8 to Carol Crews Carter). That includes the relevant sliver of land between the southernmost governmental section lines and the fence line within Sections 7 and 8. *See* 8.RR.DE01-002. Accordingly, the "quitclaim deed" from Carol Crews Carter to Wanda Doss "convey[ed] the present title of the grantor as effectually as would a warranty deed." *See Harrison Oil Co.*, 66 S.W.2d at 705.

3. The Hughes Family's "understanding."

The Eggemeyers nonetheless argue—without any supporting testimony—that Mr. Hughes's predecessors-in-interest "understood" that the present-in-2019 fence within the interior of Sections 7 and 8 was the real boundary line between the Hughes Ranch and the properties to the south. *See* Egg.Br. at 19. But the instruments speak for themselves, clearly identifying the boundary line between properties as the established governmental section line (as the court found). *E.g.*, 5.RR.1.16. And in any event, the Eggemeyers are wrong too about the Hughes Family's "understanding"; the only testimony elicited at trial as to the "understanding" of the Hughes Family was that the family understood at all times that the property line between the Hughes Ranch and the Eggemeyers' properties was the governmental section lines marked on the ground by stone mounds. 3.RR.249-51.

Still, the Eggemeyers contend that the Hughes Family "understood" that the present-in-2019 fence line within Sections 7 and 8 marks the real boundary line between the parties because—over the course of a century—two deeds described the

total acreage in the Hughes Ranch incorrectly. *See* Egg.Br. at 19. But again, the Eggemeyers are wrong: it is black-letter Texas law that the identification of the number of acres in a title instrument "is the least reliable of all calls in a deed." *Stribling v. Millican DPC Partners*, 458 S.W.3d 17, 21 (Tex. 2015) (per curiam). Courts will instead look to the "more specific and therefore better" indicia of the parties' intent—such as the actual description of the property. *See id.* From the sovereign to the present, the operative deeds—including to the 1914 boundary agreement this dispute is centered upon—describe the boundary lines of the Hughes Family Ranch as defined by the governmental sections lines. *See supra*.[3]

Nor do the particular deeds that the Eggemeyers point to for their argument of a different boundary line actually support their position. *See* Egg.Br. at 19-20. For example, although a warranty deed purported to convey 667 acres (as fenced in) in Section 8 from Carol Crews Carter to Wanda Doss in 1989, *id.* at 19; 5.RR.Ex.1.106, the separate quitclaim deed from Carol Crews Carter to Wanda Doss conveyed *all* of the grantor's interest in Section 8, *see* 5.RR.Ex.1.107—which included *all* of Section 8, *see* 8.RR.DE29-072. Likewise, the deed conveying the southern portion of Section 7 from Duwain Hughes, Jr. to Frances Crews conveyed "[a]ll of the South Half (S/2) of Section No. Seven (7)." 5.RR.Ex.1.98. It should go without saying that an

3. Moreover, the total acreage of a tract of land provides the *amount* of acreage in a tract, not the *location* of the tract's southern boundary line.

instrument conveying *all* of a governmentally recognized section conveys all the land within the governmental boundary lines of that section, and an instrument conveying *all* of the south half of a governmentally recognized section conveys all the land within the governmental boundary lines of the southern half of the section.

4. The Talley-to-Malone deed and the adverse-possession affidavits.

Last, the Eggemeyers ask the Court to look to *their* chain of title—instead of Mr. Hughes's superior chain of title—as a reason to question the trial court's fact findings. *See* Egg.Br. at 20-22. But as the Eggemeyers concede, title is demonstrated by a superior (*i.e.*, earlier) chain of title from the sovereign—not upon the strength or weakness of a litigation opponents' title. *See* Egg.Br. at 15. Moreover, because the only instrument that the Eggemeyers point to as purportedly altering the southern boundary of the Hughes Ranch is the 1914 boundary-line agreement—and that instrument contravenes the Eggemeyers' position, *see supra*—later instruments within the Eggemeyers' chain of title are irrelevant. In other words, because the Eggemeyers' predecessor-in-interest identified the boundary between the parties' properties as the governmental section line marked by stone mounds, any post-agreement one-sided claim by the Eggemeyers' predecessors-in-interest is immaterial.

In any event, the instruments that the Eggemeyers point to for this argument too do not support their position. For example, the 1930 Talley-to-Malone deed upon

which the Eggemeyers rely expressly states the opposite of the position they take: it does *not* state that the northern boundary line of the property conveyed to the Eggemeyers' predecessor-in-interest M.L. Talley is a fence within Sections 7 and 8. 8.RR.DE28-002. To the contrary, the 1930 Talley-to-Malone deed expressly identifies the northern boundary of the conveyed property as the established governmental section "line between [Sections] 4 and 7" as evidenced on the ground by stone mounds. *Id.* The fact that the 1930 Talley-to-Malone deed expressly states that the boundary line is the "line between [Sections] 4 and 7" *and* references the 1914 boundary-line agreement (which also sets the boundary line between the parties' property as the governmental section line marked by stone mounds) defeats the Eggemeyers' argument and confirms that the property line is the governmental section line. *Id.* Moreover, the 1930 Talley-to-Malone deed expressly identifies the location of the property conveyed by the deed *and does not list any land within either Section 7 or Section 8*. *Id.* Again, far from delegitimizing the trial court's determination, the Talley-to-Malone deed confirms it.

Next, the Eggemeyers point to two "affidavits" executed in August 1990 as purported authority for their boundary-line argument. *See* Egg.Br. at 21. But those two instruments too undermine rather than support the Eggemeyers' position. Although not entirely clear, the purpose of the "affidavits" appears to be to set up a claim for adverse possession for the sliver of land between the governmental section

line and the fence line within Sections 7 and 8—not to make a claim to record title. 8.RR.DE28-029-042. Both "affidavits" state that it has just "come to light" that the then-existing fence is within Sections 7 and 8 (rather than on the section lines), and that the affiants declare that the property between the fence line and the governmental section line has been claimed "openly and notoriously." 8.RR.DE28-030, DE28-037. Neither affidavit states or claims that the then-present fence evidences the boundary line established in title instruments. To the contrary, the affidavits state that it had only recently been discovered that the existing fence was within Sections 7 and 8. *Id.* If, as the Eggemeyers argue, everyone "understood" that the parties' agreed boundary line was a fence within Sections 7 and 8 in 1914, why would anyone declare—76 years later—that it had just "come to light" that the fence was within Sections 7 and 8? Wouldn't they have already known? And if, as the Eggemeyers argue, their predecessors-in-title held—by record title since 1914—the sliver of land between the governmental section lines and the interior fence on Sections 7 and 8, then why would the Eggemeyers' predecessors-in-interest declare that they had "occupied" that sliver "open and notoriously"? In other words, if everyone knew that the Eggemeyers' predecessors-in-interest owned record title to the property, why on earth

would they file affidavits claiming to have acquired it by adverse possession? The Eggemeyers' arguments defy logic.[4]

In conclusion, there is far more than factually sufficient evidence to support the trial court's boundary-line determination. The deed instruments and boundary-line agreements are crystal clear: the Hughes Ranch's southern boundary is the established governmental section line marked on the ground by stone mounds. The evidence is not just sufficient to support that determination; it is overwhelming and conclusive.

II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN AWARDING MR. HUGHES SEGREGATED ATTORNEYS' FEES.

The Eggemeyers' secondary argument contests the trial court's partial award of attorneys' fees to Mr. Hughes. *See* Egg.Br. at 23-46. The Eggemeyers advance two sub-points: (1) that the trial court did not have discretion to award any attorneys' fees in this case; and (2) that the trial court did not have discretion to award segregated attorneys' fees. *Id.* Both arguments contravene settled Texas law.

A. The Trial Court Did Not Abuse Its Discretion by Recognizing That This Case Arose from a Boundary-Line Dispute.

In the first half of their brief, the Eggemeyers repeatedly argue that the trial court's judgment should be set aside (and the case remanded for retrial) because—in the Eggemeyers' view—the "real" boundary line between the Hughes Ranch and the

4. The trial court also concluded that the Eggemeyers did not establish adverse possession, CR.1167-70—which the Eggemeyers did not challenge on appeal.

Eggemeyers' property is the present-in-2019 fence line within Sections 7 and 8. *See supra* at Part I; *e.g.*, Egg.Br. at 14 (contesting trial-court declaration that 1914 boundary agreement "set the boundary lines between the parties' properties to the established [governmental] section lines"), 15 (asserting "the 1914 Agreement ... recognized the fence line as ... the boundary" between the parties' properties). In the second half of their brief, however, the Eggemeyers argue that the trial court's attorneys-fee award should be set aside because this case isn't really a "'boundary line' dispute." *Id.* at 24-35. The Eggemeyers are incorrect.

As this Court recognized in *Vernon v. Perrien*, in 2007, the Texas Legislature amended § 37.004 of the Texas Civil Practice and Remedies Code "to permit a person to obtain a determination of the proper boundary line between adjoining properties." 390 S.W.3d 47, 54 n. 2 (Tex. App.—El Paso 2012, pet. denied) (citing TEX. CIV. PRAC. & REM. CODE § 37.004(c)). That amendment revised the typical rule that a trespass-to-try-title claim is "the exclusive method to adjudicate rival claims of title to real property." *Id.* at 54. Given the legislative override, it is now the law of Texas that "a claimant may sue for declaratory relief" in a title dispute that is determined by "the proper boundary line between adjoining properties." *Heredia*, 559 S.W.3d at 231 n.4 (citing TEX. CIV. PRAC. & REM. CODE § 37.004(c)); *Nw. Indep. Sch. Dist. v. Carroll Indep. Sch. Dist.*, 441 S.W.3d 684, 689 (Tex. App.—Fort Worth 2014, pet. denied) ("[I]f determining a boundary line may also result in declaring title to real

property, a party is no longer prohibited from seeking a declaration of rights under the Declaratory Judgments Act."). And because the Declaratory Judgments Act expressly permits the recovery of attorneys' fees, a claimant is permitted to recover attorneys' fees in a title dispute determined by the proper boundary line between adjacent properties. *Puga v. Salesi*, No. 01-14-00724-CV, 2015 WL 3877755, *5 (Tex. App.—Houston [1st Dist.] June 23, 2015, no pet.) (mem. op.) (citing TEX. CIV. PRAC. & REM. CODE § 37.009).

In fact, the Texas Supreme Court recently affirmed a trial court's judgment—expressly including the issuance of an attorneys-fee award—in a dispute that is factually indistinguishable from this case. *See Stribling*, 458 S.W.3d at 19. In *Stribling*, two adjacent landowners disputed ownership of a 34.28-acre sliver of land. *Id.* at 19. One side asserted "record title" to the tract even though "a long-standing fence" existed within that side's property. *Id.* The other side asserted record title of its own, or in the alternative, adverse possession. *Id.* The trial-court judgment—which the Texas Supreme Court affirmed—held that the plaintiff did not prove record title and awarded attorneys' fees. *Id.* (citing TEX. CIV. PRAC. & REM. CODE § 37.004(c) ("authorizing declaratory-judgment actions in boundary-dispute cases")).

Under the Texas Supreme Court's *Stribling* opinion and this Court's opinions in *Vernon* and *Heredia*, it is undeniable that the trial court had authority to issue an

attorneys-fee award in this boundary-line dispute. The Court need only look to the first half of the Eggemeyers' brief to see that this is a title dispute determined by the location of a boundary line. There, the Eggemeyers argued that:

- "the 1914 Agreement ... recognized the fence line as establishing the boundary" between the parties' properties, *see* Egg.Br. at 15;
- the "totality of the evidence ... demonstrated ... the establishment of the fence line as the boundary" between the parties' properties, *id.* at 19;
- "the 1914 Agreement established ... the fence line as the accepted boundary" between the parties' properties, *id.* at 20; and
- "the 1914 Agreement established ... the fence line as the accepted boundary" between the parties' properties, *id.* at 23.

Having correctly recognized that the trial court's identification of the boundary line between the Hughes Ranch and the Eggemeyers' properties is dispositive of this dispute, *see supra*, it is near frivolous—especially in light of *Stribling*, *Vernon*, and *Heredia*—for the Eggemeyers to then assert that this case isn't determined by the boundary line.

Indeed, this case has *always* been about the identification of the boundary line between the Hughes Ranch and the Eggemeyers' properties. In Mr. Hughes's first pleading, for example, he alleged that title to the disputed sliver of land—*i.e.*, that land between the governmental section lines (dividing Sections 7 and 8 to the north from Sections 3 and 4 to the south) and the interior fence within Sections 7 and 8—is

determined by the boundary line between the properties. For example, Mr. Hughes pleaded that:

- the boundary line is the governmental section line marked on the ground by stone mounds, 1.CR.11;
- the deeds recognize the "section line (and property line) on the stone mounds," 1.CR.12;
- the Eggemeyers' predecessor-in-interest "considered his property line to end at the section line (as marked by the stone mounds)," 1.CR.13; and
- "the definitive boundary markers – the stone mounds – remain in place today," 1.CR.16.

Likewise, Mr. Hughes' testimony at trial largely focused on the identification and location of the boundary line between his family's ranch and the Eggemeyers' properties:

> Q. Mr. Hughes, ... since you've been going to the ranches from a young child until now, has anyone ever expressed any uncertainty to you about where the boundary line was located between Section 7 and 4 and Section 8 and 3?
>
> A. No. The boundary line are the stone mounds.
>
> Q. And ... again, are the stone mounds located on the section line?
>
> A. Yes, they're located normally in the section corners.
>
> Q. Along the section line between Section 7 and 4 and 8 and 3 that's reflected here on Plaintiff's [exhibit] 2?
>
> A. That's correct, yes, sir.

> Q. Have you ever been aware, Mr. Hughes, of any dispute between the owners of Section 7 and Section 4 as to where the boundary line between the property was located?
>
> A. No. Up until this ... [dispute] with the Eggemeyers, no. I have no knowledge at all of any dispute.
>
> Q. *And was this lawsuit the first time that anyone had ever raised to you a dispute as to where the boundary line between your property and the Eggemeyers' property is located?*
>
> A. Yes. It's the first I ever became aware of somebody making a claim.

2.RR.89-90 (emphasis added).

Mr. Hughes also explained at trial that the 1914 boundary-line agreement set the property boundary at the governmental section line marked by stone mounds—which are still present today at the section line, not the interior fence line:

> Q. Mr. Hughes, whenever you read this agreement, did you see the reference to the stone mounds?
>
> A. Yes. That's the primary reference in this document are the stone mounds.
>
> Q. And as we sit here today, the stone mounds, are they located under the [current] fence line or are they located on the [governmental section] boundary line?
>
> A. The stone mounds are located on the [governmental] section line.

2.RR.145.

On cross-examination of Mr. Hughes, the Eggemeyers' attorney too indicated his full understanding that this case is—above all else—a boundary-line dispute:

> Q. [W]ould you agree with me that this litigation centers around that fence line on both sides, correct?
>
> A. No. I believe it centers around the stone mounds and the section line.
>
> Q. I understand. But what we're fighting is between the fence line and the section lines, correct?
>
> A. Yes, that's apparently the dispute.
>
> Q. *But you understand that our side is that the fence line is the boundary line, the property line, correct?*
>
> A. Yes, I understand y'all are claiming that.

3.RR.239-40 (emphasis added).

Further into cross-examination, Mr. Hughes explained that the stone mounds marking the governmental sections lines as the boundary line between the parties' properties—as recognized in the 1914 boundary-line agreement—are visible in every survey since and remain present to mark the section line today:

> A. [T]hey're talking about the stone mound on the section line between Section 7 and Section 4.
>
> Q. And you would agree with me that the stone mound is no longer there, correct?
>
> A. No. ... [A]bsolutely not. The stone mound is absolutely there. It's there on the 1928 map. It's there on the Cynthia Malone map. It's there on the Kile map. It's there on my 1956 map, and it's there on this one we all have prepared for this litigation. They've never moved. It's a felony in Texas to move the stone mounds.

3.RR.246-47. Later again, Mr. Hughes explained on cross-examination:

> [The predecessors to both sides] did this boundary agreement so there wouldn't be any confusion in the future like we have now as to where the boundary is. The boundary is the stone mounds which are in the section lines. And it's ... plain on its face. All these references are to the stone mounds.

3.RR.249-50. In fact at one point during cross-examination, the Eggemeyers' counsel appeared to acknowledge the problem with his clients' argument (*i.e.*, that the 1914 boundary-line agreement set the boundary off the governmental section lines) in light of the actual text of the 1914 boundary-line agreement (which set the boundary on the governmental section lines marked by stone mounds):

> Q. I'll give it to you. The stone mounds right there (indicating); and they're on the section line, which is where they should be, correct?
>
> A. Correct.

3.RR.253.

In short, the "heart" of this case is, and has always been, the proper boundary line between the parties' adjacent properties, and the location of that boundary line is dispositive. As a result, Texas law—as recognized by the Texas Supreme Court in *Stribling* and this Court in *Vernon* and *Heredia*—gave the trial court discretion to award Mr. Hughes attorneys' fees under the Declaratory Judgments Act.

The cases from other Texas jurisdictions referenced by the Eggemeyers do not hold otherwise. In *Lile v. Smith*, for example, the Texarkana Court of Appeals recognized that § 37.004 of the Texas Civil Practice and Remedies Code "specifically

permit[s] a boundary dispute to be litigated as a declaratory judgment action." 291 S.W.3d 75, 78 (Tex. App.—Texarkana 2009, no pet.). It concluded that the suit in that case was a trespass-to-try-title suit rather than a boundary dispute only because—unlike here—"[t]here [was] no indication that the controversy ... arose in a dispute over the location of a boundary." *Id.* The same is true of *Acrey v. Langston Land Partners, LP.*, in which the Eastland Court of Appeals recognized that "attorney's fees are recoverable in boundary disputes," but held that the claimant there couldn't recover attorneys' fees because—unlike here—"there [was] no indication that the controversy ... arose in a dispute over the location of a boundary." No. 11-14-00025-CV, 2016 WL 1725371, *7 (Tex. App.—Eastland Apr. 29, 2016, no pet.) (mem. op.). And in *Kehoe v. Clouse*, the San Antonio Court of Appeals noted that the facts of that case—unlike here—didn't present a property-boundary dispute at all, but rather the question of who owned stranded property between the two sides' properties. No. 04-14-00151-CV, 2015 WL 1393535, *2 (Tex. App.—San Antonio Mar. 25, 2015, pet. denied) (mem. op.).

There is no authority supporting the Eggemeyers' argument that attorneys' fees are unrecoverable in a title dispute determined a boundary-line determination. The trial court's judgment should be affirmed.

B. The Trial Court Did Not Abuse Its Discretion by Awarding Segregated Attorneys' Fees.

The Eggemeyers' last argument is a challenge to the trial court's segregated attorneys-fee award of $144,135.50 of the $440,000.00 incurred and requested by Mr. Hughes at trial. *See* Egg.Br. at 35-46; CR.1168-69 (findings of fact and conclusions of law). Specifically, the Eggemeyers argue that the trial court had no discretion to award a segregated amount of attorneys' fees (for claims for which fees are recoverable) because Mr. Hughes's counsel did not himself perform a segregation analysis at trial. *See* Egg.Br. at 35-46. Again, the Eggemeyers are incorrect: Texas law—including precedent from this Court—holds that when attorneys' fees are recoverable for some claims (like the boundary-line dispute, *see supra*) but not others, trial courts may perform segregation analysis themselves and award segregated attorneys' fees even when a claimant's counsel did not perform a segregation analysis at trial. *See Alford v. Johnston*, 224 S.W.3d 291, 299-300 (Tex. App.—El Paso 2005, pet. denied); *McMahon v. Zimmerman*, 433 S.W.3d 680, 689-94 (Tex. App.—Houston [1st Dist.] 2014, no pet.); *Flint & Assocs. v. Intercontinental Pipe & Steel, Inc.*, 739 S.W.2d 622, 623-26 (Tex. App.—Dallas 1987, writ denied); *Express One Int'l, Inc. v. Kitty Hawk Charters, Inc.*, No. 05-95-01741-CV, 1998 WL 261783, *3-5 (Tex. App.—Dallas May 26, 1998, pet. denied) (not designated for publication).

This Court was faced with—and squarely rejected—the Eggemeyers' argument in *Alford*. 224 S.W.3d at 299-300. There, the appellant argued that the trial court erred by awarding segregated attorneys' fees given that the appellee's counsel "failed to segregate the attorney's fees attributable to his contract claim from those attributable to his [tort] claim." *Id.* at 299. The Court acknowledged that "[a]s a general rule, the party seeking to recover attorney's fees carries the burden of proof and must show that the fees were incurred on a claim that allows recovery of such fees and, thus, is ordinarily required to segregate fees by claim when there are multiple claims which may or may not allow the recovery of such fees." *Id.* But, according to the Court, a trial court may perform that analysis itself based on "the evidence presented" at trial and "the usual and customary attorney's fees for the services provided and the contents of the case file." *Id.* at 300. Thus, even though the appellee's attorney in *Alford* testified only to a non-segregated total fee of $5,000, this Court held that the trial court did not abuse its discretion by ordering a $2,000 attorneys-fee award in the judgment. In other words, a trial court *does not* "err in applying its discretion in awarding reasonable [segregated] attorney's fees" even when the claimant's attorney has not testified to fee segregation. *Id.*

Houston's First Court of Appeals reached the same conclusion in *McMahon*. 433 S.W.3d at 689-94. There, the appellee "had a statutory basis for seeking attorney's fees on her breach-of-contract claim but [not] ... on her defamation claim."

Id. at 690. The appellee's attorney had testified at trial only to a total amount of $72,810 in fees, contending that the entire amount is "recoverable because the breach-of-contract claim and the legal-malpractice claim were too intertwined to require segregation." *Id.* After reviewing the evidence, the trial court conducted its own analysis and awarded segregated fees in the amount of $6,000. *Id.* at 691.

The court of appeals affirmed, holding that the trial court was well within its discretion to perform a segregation analysis of its own even though appellee's counsel had not done so at trial. *Id.* at 691-94. Just as this Court wrote in *Alford*, the court of appeals first noted the "typical" rule that "if segregation is required and the claimant does not provide testimony from counsel on the proper segregation of the fee, the cause is remanded for a factual determination of the portion of the attorney's work that is attributable to the recoverable claim." *Id.* at 691 (citations omitted). But the court held that the typical rule *does not apply* when the trial court elects to conduct segregation analysis on its own: although "trial courts have no obligation to ... segregate fees on behalf of litigants who do not offer segregation testimony," they do "not err in electing to do so." *Id.* at 692.

That settled Texas rule was also applied in *Flint*. 739 S.W.2d at 625-26. There, the appellant argued that the trial court erred by awarding segregated attorneys' fees because appellee's trial counsel refused to segregate fees at trial. *Id.* at 624-25. Rejecting that argument, the Dallas Court of Appeals explained that

hearing unsegregated attorneys-fee evidence isn't error; rather, *awarding* unsegregated attorneys' fees is. *Id.* at 625. Thus, a trial court does not err by performing a segregation analysis on its own. *Id.* at 625 ("the court may determine a reasonable fee for legal services rendered in a case based upon its knowledge of usual and customary rates and its review of its own file"); *see also Express One*, 1998 WL 261783, at *5 ("[a] court [may] determine what portion of the requested fees [are] reasonably attributable to services for which fees could be recovered.").

In short, Texas law unequivocally permits trial courts to determine and order a segregated attorneys-fee award in the absence of a litigant's counsel's segregation testimony. *McMahon*, 433 S.W.3d at 692. Trial courts may look to a party's billing records, the usual and customary attorney's fees, and the contents of the case file to determine a segregated award. *Id.* at 691-92. Trial courts may also "draw on their common knowledge and experience as lawyers and as judges in considering the testimony, the record, and the amount in controversy in determining attorney's fees." *Id.* at 693 (citations omitted). "Further, courts are free to look at the entire record, the evidence presented on reasonableness, the amount in controversy, the common knowledge of the participants as lawyers and judges, and the relative success of the parties to determine a reasonable fee." *Id.*

That settled rule disposes of the Eggemeyers' argument. Here, the trial court elected to conduct its own segregation analysis and awarded a segregated fee for only

those claims for which fees are recoverable—precisely as allowed by the settled precedent of this Court and others. In finding of fact number 30, the trial court found:

> [Mr. Hughes] incurred reasonable and necessary attorneys' fees in the amount of $144,135.50 to prosecute claims for which attorneys' fees may be awarded. This amount constitutes a segregated portion of the total fees incurred by [Mr. Hughes] and represents only those fees for work pursuant to claims for which attorneys' fees may be awarded under Texas law.

CR.1168; *see also* CR.1169 ("[Mr. Hughes] shall recover from [the Eggemeyers] reasonable and necessary attorneys' fees in the amount of $144,135.50 for work on claims for which fees are recoverable under Texas law."). Thus, the salient question isn't *whether* a trial court may perform segregation analysis and award segregated attorneys' fees in the absence of a party's counsel doing so, but rather whether the evidence was factually and legally sufficient to support the award. Here, the answer is "yes."

The trial court's judgment awarded Mr. Hughes a segregated attorneys-fee award of less than a third of the $440,000.00 in fees incurred by Mr. Hughes and requested by Mr. Hughes's counsel, Mr. Robert Crumpler, Jr., at trial. 2.RR.184-85. Mr. Crumpler testified regarding his and his co-counsel's background and experience, areas of practice, and familiarity with customary rates in Reagan County and the surrounding areas. 2.RR.171-73. Mr. Crumpler also testified that he reviewed all of the bills in this matter and considered the work needed to prosecute the case.

2.RR.173-75. Mr. Crumpler submitted redacted invoices as part of his testimony, 2.RR.174-77, and those bills reflect work performed, time spent, and rates charged, 2.RR.177.

Mr. Crumpler testified that in his experience, the time spent on the matter was reasonable, as was the charged hourly rate. 2.RR.178-79. Mr. Crumpler explained his practice of assigning work to associates to perform work at a lower rate whenever possible. 2.RR.179-80. He explained that a large part of the fees were required to defend the multiple depositions requested and noticed by the Eggemeyers. 2.RR.181. He also explained that the voluminous title instruments took time to put together. 2.RR.181-82. Likewise, Mr. Crumpler testified to his hourly rate as well as those of his co-counsel, 2.RR.182-83, and explained that the hourly rates charged were at the lower end of the spectrum of lawyers at similar experience levels, 2.RR.183. Finally, Mr. Crumpler testified that in his opinion, a reasonable and necessary fee on this matter—through all post-trial motions but before appeal—would be $440,000. 2.RR.184-85. Mr. Hughes also confirmed that he received and paid the invoices for the legal work performed. 2.RR.150-53.

This testimony and evidence is far more than factually and legally sufficient to support the award. "An appellant attacking the legal sufficiency of an adverse finding on which it did not have the burden of proof at trial must demonstrate that there is no evidence to support the adverse finding." *Stover v. ADM Milling Co.*, No.

05-17-00778-CV, 2018 WL 6818561, *18 (Tex. App.—Dallas Dec. 28, 2018, pet. filed) (mem. op.) (citing *Exxon Corp. v. Emerald Oil & Gas Co., L.C.*, 348 S.W.3d 194, 215 (Tex. 2011); *LandAmerica Commonwealth Title Co. v. Wido*, No. 05-14-00036-CV, 2015 WL 6545685, *3 (Tex. App.—Dallas Oct. 29, 2015, no pet.) (mem. op.)). "Unsegregated attorney's fees for the entire case are *some evidence* of what the segregated amount should be"—thereby defeating a legal-sufficiency challenge. *Tony Gullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299, 314 (Tex. 2006) (emphasis added); *see also Stover*, 2018 WL 6818561, at *18; *McMahon*, 433 S.W.3d at 694. Mr. Crumpler's lengthy attorneys-fee testimony provided the total fee for the case and evidence of the reasonableness of the fee under Texas's requirements to demonstrate attorneys' fees, *see supra*—thereby defeating a legal-sufficiency challenge to the amount or reasonableness of the fee as a matter of law. *See Chapa*, 212 S.W.3d at 314; *Stover*, 2018 WL 6818561, at *18; *McMahon*, 433 S.W.3d at 694.

Likewise, factual-sufficiency challenges to non-segregated attorneys-fee evidence are without merit—as a matter of law—where the trial court has reviewed the available evidence itself (such as billing records and the case file) and performed its own segregation analysis. *See Alford*, 224 S.W.3d at 299-300; *McMahon*, 433 S.W.3d at 691-94; *Flint & Assocs.*, 739 S.W.2d at 625-26; *Express One*, 1998 WL 261783, at *3-4. Trial "courts are free to look at the entire record, the evidence presented on reasonableness, the amount in controversy, the common knowledge of

the participants as lawyers and judges, and the relative success of the parties to determine a reasonable fee." *McMahon*, 433 S.W.3d at 693; *e.g.*, *Express One*, 1998 WL 261783, at *4. In addition to that evidence, courts may "take judicial notice of the usual and customary attorney's fees for the services provided and the contents of the case file, even [if] no request was made for the trial court to do so." *Alford*, 224 S.W.3d at 291. Here, the trial court had before it the case file, the billing records, the testimony of Mr. Crumpler and Mr. Hughes regarding attorneys' fees, and the testimony of Mr. Crumpler regarding the reasonableness and calculation of the fees. *See supra*. The court was also free to take judicial notice of the usual and customary attorneys' fees for the services provided. *Alford*, 224 S.W.3d at 291 (citing TEX. CIV. PRAC. & REM. CODE § 38.004). The trial court then performed its own segregation analysis and awarded Mr. Hughes less than a third of his incurred and requested attorneys' fees. CR.1168-69; 2.RR.184-85. Given the great deal of evidence supporting a fee in an amount far greater than that awarded by the trial court, the trial court's decision to order an attorneys-fee award was *not* "manifestly unjust," nor did it "shock the conscience" or "clearly demonstrate bias." *See Pool*, 715 S.W.2d at 635; *Windrum*, 581 S.W.3d at 781-82; *In re King's Estate*, 244 S.W.2d at 661; *Kendall Builders*, 149 S.W.3d at 803. To the contrary, the awarded fee on a "fully litigated" case—in light of billing records, a multi-day trial, testimony regarding "the total fee incurred," the attorney's "billable rate," the customary fees for such work,

and the "content of the case file"—is backed by far more than factually sufficient evidence and therefore does not "require reversal." *See McMahon*, 433 S.W.3d at 694.

The trial court's judgment is supported by far more than sufficient evidence. Its decision to perform a segregation analysis on its own was within its discretion under settled and binding Texas law. Accordingly, the trial court's judgment should be affirmed.

PRAYER

For these reasons, Appellee Charles Jackson Hughes respectfully requests that this Court affirm the judgment of the trial court. Mr. Hughes also respectfully requests any such additional relief to which he is entitled.

Respectfully submitted,

/s/ Ryan Clinton

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ATTORNEYS FOR APPELLEE
CHARLES JACKSON HUGHES

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent this 19th day of March, 2020, as follows:

VIA EFSP
Jonathan J. Cunningham
Gregory Brewer
Tiffany Gilbert
Fidelity National Law Group
14785 Preston Road, Ste. 1150
Dallas, TX 75254-7026

/s/ Ryan D. Clinton
Ryan D. Clinton

CERTIFICATE OF COMPLIANCE

Relying on the word count function in the word processing software used to produce this document (WordPerfect X9), I certify that the number of words in this brief (excluding any caption, identity of parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of jurisdiction, statement of procedural history, signature, proof of service, certification, certificate of compliance, and appendix) is 9,693 and that the text of the document is in 14-pt. font. The text of all footnotes is 12-pt.font.

/s/ Ryan D. Clinton
Ryan D. Clinton

FILED at 3:00 P M
Reagan County
OCT 2 2018
Terri Curry
County and District Clerk
By_____ Dep

CAUSE NO. 1855

CHARLES JACKSON HUGHES,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	REAGAN COUNTY, TEXAS
	§	
WILLIAM EGGEMEYER, DIANE EGGEMEYER, and BO EGGEMEYER,	§	
	§	
	§	
Defendants.	§	112th JUDICIAL DISTRICT

Final Judgment

On July 18, 2018, this case was called for bench trial. Plaintiff Charles Jackson Hughes appeared and announced ready for trial. Defendants William Eggemeyer, Diane Eggemeyer, Bo Eggemeyer and Sharyland Distribution & Transmission Services, LLC also appeared and announced ready for trial.

After hearing the evidence and argument of counsel, the Court enters its judgment as follows:

Prior to trial Plaintiff and Defendants entered a Stipulation of Facts wherein the parties stipulated that only the surface estate of the real property described herein as the "Disputed Acreage" is at issue in this case. The parties further stipulated that no claim is made by any party to any other real property interest. Accordingly the Court recognizes the Disputed Acreage as follows:

a. 39.312 Acres in Section 7, G.C. & S.F. RR. Co. Survey between the existing fence line and the established Section line of Section 7, G.C. & S.F. RR. Co. Survey and Section 4, W.G. Bartlett Survey;

b. 48.715 Acres in Section 8, E.W. Walker Survey between the existing fence line and the established section line on Section 8, E.W. Walker Survey and Section 3, G.C. & S.F. R.R. Co. Survey;

c. .126 Acres in Section 8, M. Dorboson Survey between the existing fence line and the established Section line of Section 8, M. Dorboson Survey and Section 8, E.W. Walker Survey;

d. .573 Acres located in Section 28, T.T. RR. Co. Survey between the existing fence

line and the established Section line of Section 28, T.T. RR. Co. Survey and Section 3, G.C. & S.F. RR. Co. Survey; and

e. 2.243 Acres located in Section 9, M.A. Lindley Survey between the existing fence line and the established section line of Section 9, M.A. Lindley Survey, Section 3, G.C. & S.F. RR. Co. Survey, and Section 2, W.G. Bartlett Survey.

Such Disputed Acreage is reflected on Plaintiff's Trial Exhibits 2 and 3, which are attached and here incorporated by reference and for all purposes as part of this Final Judgment.

IT IS ORDERED, ADJUDGED and DECREED that the December 28, 1914 Boundary Agreement by and between Plaintiff and Defendants' predecessors in title set the boundary lines between the parties' properties to the established section lines. Accordingly, the established section lines as described in the parties' stipulation regarding the Disputed Acreage establish the boundary lines between Plaintiff's and Defendants' respective tracts.

IT IS ORDERED, ADJUDGED and DECREED that Plaintiff has superior title to the Disputed Acreage from the sovereign and as such Plaintiff Charles Jackson Hughes is the sole and rightful owner of the fee simple title to such Disputed Acreage and is awarded possession of the Disputed Acreage, particularly and including as against any claim to ownership of said lands by Defendants.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Plaintiff recover from Defendants reasonable and necessary attorneys' fees in the amount of $144,135.50. It is further ordered that Plaintiff recover from Defendants court costs as calculated by the District Clerk pursuant to Texas law.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED by this Court that Plaintiff recover from Defendant post-judgment interest on the amount of $144,135.50 awarded to Plaintiff above at the rate of 5% per annum, compounded annually, from and after the date of this Final Judgment until it is satisfied.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED by this Court that Plaintiff's request for exemplary damages is DENIED. All other claims and relief requested by Plaintiff are DENIED.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED by this Court that Defendants' counterclaims, affirmative defenses, and any and all such other requests, claims, or relief by Defendants are DENIED.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that all writs and processes necessary for execution and collection on all judgment amounts and costs of court provided for herein may issue.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED by this Court that any and all relief sought or prayed for by any of the parties hereto or which might have been prayed for herein, which is not herein specifically granted, be, and is the same is hereby, in all things, denied. Accordingly, this is a Final Judgment which resolves all issues, claims and parties from which an appeal may be taken.

SIGNED on October 2nd, 2018.

Judge Presiding

CAUSE NO. 1855

CHARLES JACKSON HUGHES,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	REAGAN COUNTY, TEXAS
	§	
WILLIAM EGGEMEYER, DIANE EGGEMEYER, and BO EGGEMEYER,	§	
	§	
	§	
Defendants.	§	112th JUDICIAL DISTRICT

Findings of Fact and Conclusions of Law

The Court makes the following Findings of Fact and Conclusions of Law pursuant to the Texas Rules of Civil Procedure:

I. Findings of Fact

1. Prior to trial, Plaintiff and Defendants entered a Stipulation of Facts wherein the parties stipulated that only the surface estate of the real property described herein as the "Disputed Acreage" is at issue in this case. Accordingly, the Court finds that the Disputed Acreage is as follows:

   a. 39.312 Acres in Section 7, G.C. & S.F. RR. Co. Survey between the existing fence line and the established Section line of Section 7, G.C. & S.F. RR. Co. Survey and Section 4, W.G. Bartlett Survey;

   b. 48.715 Acres in Section 8, E.W. Walker Survey between the existing fence line and the established section line on Section 8, E.W. Walker Survey and Section 3, G.C. & S.F. R.R. Co. Survey;

   c. .126 Acres in Section 8, M. Dorboson Survey between the existing fence line and the established Section line of Section 8, M. Dorboson Survey and Section 8, E.W. Walker Survey;

   d. .573 Acres located in Section 28, T.T. RR. Co. Survey between the existing fence line and the established Section line of Section 28, T.T. RR. Co. Survey and Section 3, G.C. & S.F. RR. Co. Survey; and

   e. 2.243 Acres located in Section 9, M.A. Lindley Survey between the existing fence line and the established section line of Section 9, M.A. Lindley Survey, Section 3, G.C. & S.F. RR. Co. Survey, and Section 2, W.G. Bartlett Survey.

2. The Disputed Acreage is reflected on Plaintiff's Trial Exhibits 2 and 3, which are attached and here incorporated by reference and for all purposes as part of these Findings of Fact and Conclusions of Law.

3. Plaintiff owns the Disputed Acreage through a regular and superior chain of title from the sovereign.

4. This is a dispute over the boundary line between the parties' lands. The boundary line between the parties' lands determines ownership of the Disputed Acreage.

5. Plaintiff's land is on the northern side of Defendants' land and the eastern side of Defendants' land. Defendants' land is on the southern side of Plaintiff's land and the western side of Plaintiff's land.

6. The boundary lines between the parties' properties are marked by stone mounds or historical evidence thereof. The boundary lines between the sections are marked by stone mounds. The boundary lines between the parties' properties are the boundary lines between the sections.

7. The northern/southern boundary between the parties' properties is the established section line running east-to-west between Sections 7, G.C. & S.F. R.R. Co. and 8, E.W. Walker, on the north and Sections 4, W.G. Bartlett and 3, G.C. & S.F. RR. Co. on the south.

8. The eastern/western boundary between the parties' properties is the established section line running north-to-south between Sections 8, E.W. Walker and 3 G.C. & S.F. RR. Co., on the west and Sections 8 M. Dorboson, 28 T.T. RR. Co., and 9 M.A. Lindley on the east.

9. The existing casual wire fence on Plaintiff's property does not mark the boundary line between the parties. The fence is in disrepair in some places and is not presently in a condition that would contain animals. It is not known who built the fence, when the fence was built, or for what purpose the fence was built. The court does not find credible any claim or evidence that the fence existing today marks the boundary lines between the parties.

10. The terrain and natural conditions of the land at the established section lines, which is also the boundary between the parties' properties, is such that it would make building a durable fence difficult and expensive.

11. In 1914, George W. Tankersley (predecessor to Plaintiff) and James A. Talley (predecessor to Defendants) recorded a boundary agreement in the Reagan County Deed Records. The Boundary Agreement marked the boundary between the parties as the line between the stone mounds located on the established section lines.

12. The stone mounds reflected in the Boundary Agreement and deed records remain present today and mark the established section lines and boundary lines between the parties' properties.

13. The established section lines have been clearly reflected in multiple surveys prepared over the years and there is no dispute as to the location of the established sections as reflected by those surveys.

14. The fence existing today does not mark the boundary between the parties' properties. The court does not find credible any claim or evidence that the fence existing today is the fence noted in the Boundary Agreement.

15. The court does not find that Defendants committed an actionable breach of contract with respect to the 1914 Boundary Agreement.

16. The court does not find that Defendants committed an actionable trespass upon the Disputed Acreage.

17. The court does not find that Defendants committed an actionable fraud against Plaintiff.

18. The court does not find that Defendants' actions constitute an actionable ground for exemplary damages.

19. Neither Defendants nor their predecessors established title to the Disputed Acreage by adverse possession or any other method.

20. Defendants did not demonstrate actual, visible, continuous, notorious, distinct, and hostile possession of the Disputed Acreage. Defendants did not demonstrate possession of the Disputed Acreage of such character to indicate unmistakably an assertion of a claim of exclusive ownership in the property.

21. The Disputed Acreage was, at most, incidentally enclosed as a result of construction of the casual fence at an unknown time, by unknown persons, and for an unknown purpose.

22. Defendants did not demonstrate that the Disputed Acreage was designedly enclosed by the casual fence existing on the property.

23. The Disputed Acreage was not cultivated by Defendants or their predecessors.

24. All uses of the Disputed Acreage by Defendants and their predecessors—including but not limited to seasonal hunting and/or occasional grazing—were intermittent, not continuous, notorious, and/or hostile.

25. Defendants did not demonstrate title or color of title from a consecutive chain of transfers from the sovereign.

26. Neither Defendants nor their predecessors occupied the Disputed Acreage in peaceable or adverse possession for a continuous period pursuant to any statute of limitations.

27. Defendants' and Defendants' predecessors' use of Plaintiff's land for occasional hunting and grazing was permissive and not hostile.

28. Defendants did not demonstrate boundary by acquiescence. Defendants did not demonstrate that the parties or their predecessors set the boundary line as anything other than the established section lines by agreement or acquiescence. Defendants did not demonstrate that the parties or their predecessors agreed to resolve doubt as to the boundary line by setting the boundary line at a location other than the section lines.

29. Defendants did not establish the elements of any affirmative defense or counterclaim, such as failure to meet conditions precedent, unclean hands, suit to quiet title, trespass, or boundary by acquiescence.

30. Plaintiff incurred reasonable and necessary attorneys' fees in the amount of $144,135.50 to prosecute claims for which attorneys' fees may be awarded. This amount constitutes a segregated portion of the total fees incurred by Plaintiff and represents only those fees for work pursuant to claims for which attorneys' fees may be awarded under Texas law.

II. Conclusions of Law

1. Plaintiff is the sole and rightful owner of fee simple title to the Disputed Acreage and is awarded possession of the Disputed Acreage, particularly and including as against any claim to ownership of said lands by Defendants.

2. The boundary between the parties' properties is the boundary between the established section lines.

3. The established section lines as described in the parties' stipulation regarding the Disputed Acreage establish the boundary lines between the parties' respective properties.

4. The established section lines have been clearly reflected in multiple surveys prepared over the years and there is no dispute as to the location of the established sections as reflected by those surveys.

5. The Boundary Agreement marks the boundary lines between the parties' properties with reference to stone mounds that mark the established section lines.

6. The stone mounds referenced in the deed instruments and Boundary Agreement mark the section lines and boundary between the parties' properties.

7. Plaintiff has superior record title to the Disputed Acreage as demonstrated by a chain of instruments from the sovereign.

8. Plaintiff shall recover from Defendants reasonable and necessary attorneys' fees in the amount of $144,135.50 for work on claims for which fees are recoverable under Texas law. Plaintiff shall also recover from Defendants court costs as calculated by the District Clerk pursuant to Texas law.

9. Plaintiff shall also recover from Defendants post-judgment interest on the amount of $144,135.50 awarded to Plaintiff at the rate of 5% per annum, compounded annually, from and after the date of this Final Judgment until it is satisfied.

10. Plaintiff shall not recover on his breach-of-contract, trespass, or fraud claims. Plaintiff shall also not recover exemplary damages.

11. Defendants failed to demonstrate any affirmative defenses or counterclaims.

12. Defendants failed to demonstrate adverse possession, statute of limitations, estoppel, failure to meet conditions precedent, unclean hands, suit to quiet title, trespass, or boundary by acquiescence.

13. Defendants failed to demonstrate continuous, notorious, or hostile use of the Disputed Acreage indicating a claim of ownership in the property for any period of limitations.

14. All claims by and between all parties are disposed of by the Court's Final Judgment.

To the extent necessary, each of these findings of fact shall be treated as a conclusion of law, and each conclusion of law shall be treated as a finding of fact.

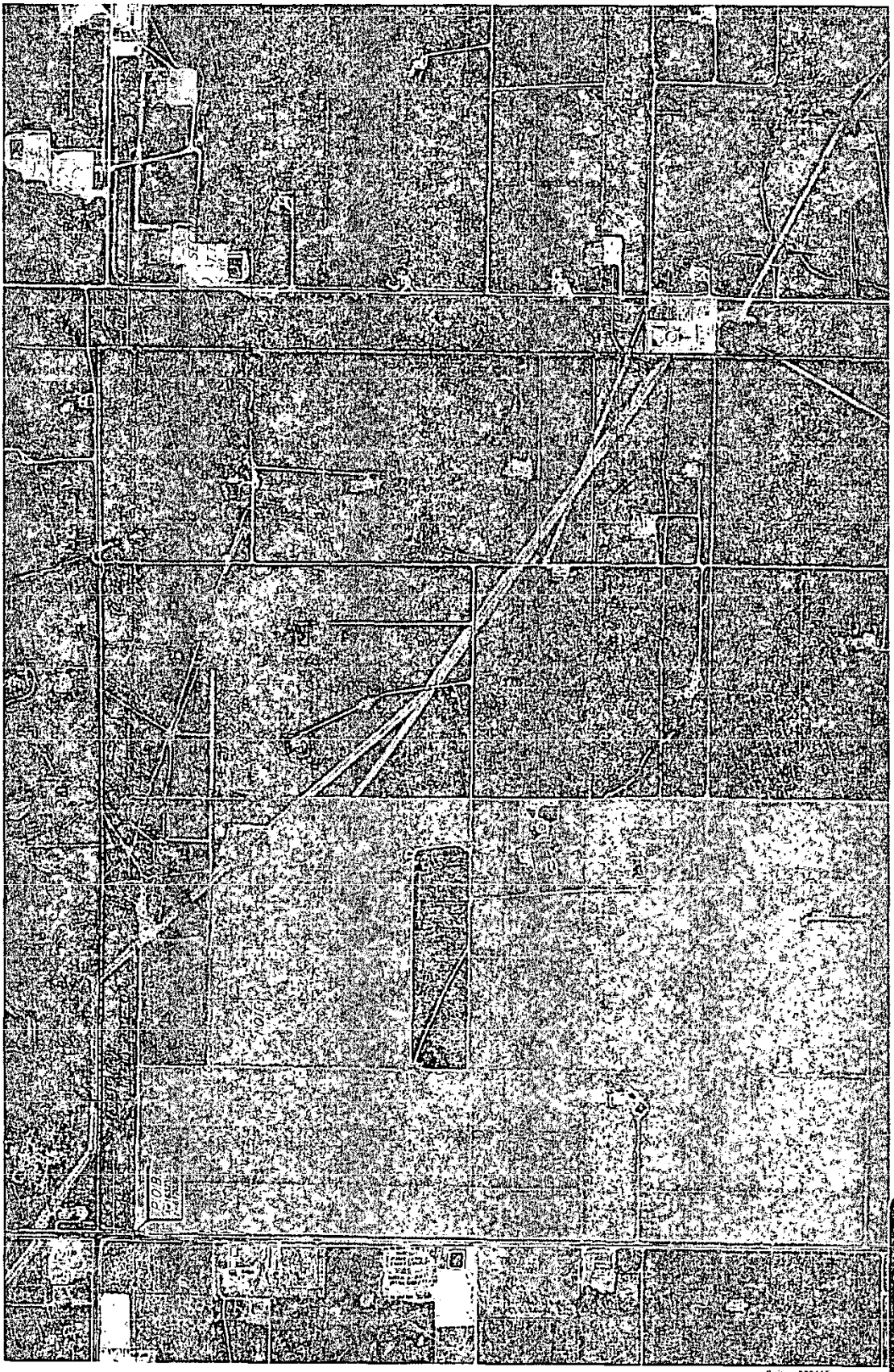
Signed this _____ day of 11/8/2018, 2018.

JUDGE PRESIDING

PLAINTIFF'S EXHIBIT 2

REAGAN County, TX

Suiter_000001



PLAINTIFF'S EXHIBIT 3

PENGAD-Bayonne, N.J.

Suiter_000115